

ARKANSAS SUPREME COURT

No. 08-75

MORRIS B. KOONTZ
Appellant

v.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION
Appellee

Opinion Delivered March 13, 2008

PRO SE MOTION FOR
APPOINTMENT OF COUNSEL
[CIRCUIT COURT OF JEFFERSON
COUNTY, CV 2007-494, HON.
ROBERT H. WYATT, JR., JUDGE]

MOTION DENIED.

PER CURIAM

Appellant Morris B. Koontz, an inmate in the custody of the Arkansas Department of Correction, filed a petition for writ of mandamus and a petition requesting declaratory relief under 42 U.S.C. § 1983 (2000) in Jefferson County Circuit Court. The circuit court dismissed the pleadings without prejudice, citing Ark. R. Civ. P. 12(b)(6), and found the dismissal was a strike under Ark. Code Ann. § 16-68-607 (Repl. 2005). Appellant has lodged an appeal of that order in this court and now brings a motion requesting this court to appoint counsel to represent him on appeal.

In his motion for appointment of counsel, appellant avers that he is indigent, that the issues are complex and that he has limited knowledge of the law, access to legal materials and skill to present the action. He asserts that the ends of justice would best be served if a local attorney were appointed to represent him.

This appeal concerns a civil matter, and not one seeking postconviction relief, such as a

petition for writ of habeas corpus. Indigent civil litigants proceeding under section 1983 do not have a constitutional or statutory right to appointed counsel. *See Davis v. Scott*, 94 F.3d 444 (8th Cir. 1996); *see also Honor v. Yamuchi*, 307 Ark. 324, 820 S.W.2d 267 (1991). In postconviction proceedings, this court has held that if an appellant makes a substantial showing that he is entitled to relief in an appeal and that he cannot proceed without counsel, we will appoint counsel. *See Howard v. Lockhart*, 300 Ark. 144, 777 S.W.2d 223 (1989) (per curiam). Even were we to apply that standard here, appellant makes no statement as to the merit of the appeal.

Appellant has not demonstrated counsel should be appointed for this appeal. Accordingly, the motion for appointment of counsel is denied.

Motion denied.